



## H.R. 5811 – Electronic Message Preservation Act

### EXECUTIVE SUMMARY

H.R. 5811 was introduced by Representative Henry Waxman (D-CA) and was reported from the Committee on Oversight and Government Reform by voice vote on June 11, 2008. The bill is expected to be considered on the floor under a closed rule on July 9, 2008.

The National Archives and Records Administration (NARA) is responsible for preserving and maintaining Federal records. As the utilization of electronic communications has increased, NARA has had to adapt to a new style of record keeping. On June 27, 2008, the Electronic Records Archive reached its initial operating stage and NARA has issued regulations to Federal agencies for managing electronic mail records. Presidential records are governed by the Presidential Records Act of 1978. Under this legislation the President is responsible for the custody and management of Presidential records.

H.R. 5811 requires the Archivist to promulgate regulations for Federal agencies regarding the preservation of electronic messages within 18 months of enactment. In addition, it requires the Archivist to annually certify the standards established by the President for the management of Presidential records, including electronic records. The Congressional Budget Office estimates that enacting this legislation would cost \$155 million over five years.

The Administration has issued a veto threat for this legislation.

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### FLOOR SITUATION

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H.R. 5811 is being considered on the floor under a closed rule. The Rule:

- Provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on Oversight and Government Reform.
- Waives all points of order against consideration of the bill except those arising under clauses 9 (earmarks) and 10 (PAYGO) of rule XXI.
- Provides that the amendment in the nature of a substitute recommended by the Committee on Oversight and Government Reform shall be considered as adopted and the bill, as amended, shall be considered as read.
- Waives all points of order against provisions of the bill, as amended. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).
- Provides one motion to recommit with or without instructions.

This legislation was introduced by Representative Henry Waxman (D-CA) on April 15, 2008. The bill was reported as amended by the Committee on Oversight and Government Reform by voice vote on June 11, 2008.

H.R. 5811 is expected to be considered on the floor of the House of Representatives on July 9, 2008.

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### BACKGROUND

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# LEGISLATIVE DIGEST

HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM

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The National Archives and Records Administration (NARA) is responsible for preserving and maintaining Government records and ensuring that individuals are able to access these documents. According to NARA, only 1 percent to 3 percent of documents and materials created in the course of business by the Federal government are important enough for legal or historical reasons that they are kept forever.

The digital age has made electronic communications and materials an integral part of how business is conducted by the Federal government. The complex and evolving technology used to create and store electronic records has made it difficult for NARA to ensure that these important digital records are preserved and accessible.

In 1998, NARA took the first step in creating the Electronic Records Archive (ERA). The ERA will enable NARA to preserve and provide access to electronic records without concern about specific hardware or software. The ERA reached Initial Operating Capability on June 27, 2008. According to NARA, "In its initial stage, the new system will support the basic process of determining how long federal agencies need to keep records and whether the records should be preserved in the National Archives afterwards." In addition, NARA has issued specific regulations for managing electronic mail records for Federal agencies.

Presidential records are governed by the Presidential Records Act of 1978 (PRA). The PRA changed the ownership of the President's official records from private to public and established a new structure under which they have to manage their records. Under current law, the President is responsible for the custody and management of Presidential records and is allowed to dispose of records that no longer have administrative, historical, informational, or evidentiary value, once he has obtained the views of the Archivist of the United States on the proposed disposal.

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## SUMMARY

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Electronic Messages: H.R. 5811 requires the Archivist to promulgate regulations governing the preservation of electronic messages by Federal agencies within 18 months of the enactment of the bill.

Reporting Requirements: The bill requires Federal agencies to submit a report on the implementation of these regulations within four years of enactment to the Archivist and following the receipt of all reports the Archivist must submit a report on compliance to the relevant House and Senate committees.

Presidential Records: H.R. 5811 requires the President to establish standards for the efficient and economical management of Presidential records including the capture, management, and preservation of electronic messages. Each year the Archivist must certify whether the President's record management controls meet the necessary requirements established by the Presidential Records Act. Within one year of the conclusion of a President's term, the Archivist must submit a report to the relevant Congressional committees on the volume and format of Presidential records deposited into the Presidential archival depository and whether the methods used for records management are in compliance with the Presidential Records Management Act.

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## ADDITIONAL VIEWS

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According to the Statement of Administration Policy, "H.R. 5811 would unwisely overturn the longstanding framework governing the management of an incumbent President's records. The bill also has the potential to impose substantial costs and reduce the efficiency of records management across the Executive Branch. If H.R. 5811 were presented to the President in its current form, his senior advisors would recommend that he veto the bill." ([SAP for H.R. 5811](#))



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## COST

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According to the Congressional Budget Office, “CBO estimates that implementing H.R. 5811 would cost \$13 million in 2009 and about \$155 million over the 2009-2013 period, assuming appropriation of the necessary amounts. The legislation could also affect direct spending by agencies not funded through annual appropriations (such as the Tennessee Valley Authority) or by agencies considered offbudget (such as the U.S. Postal Service). CBO estimates, however, that any net increase in spending by those agencies would not be significant.” ([CBO Cost Estimate](#))

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## STAFF CONTACT

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